



UNITED STATES PATENT AND TRADEMARK OFFICE

29 OCT 2007

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

Bayer CropScience LP  
Patent Department  
2 T.W. Alexander Drive  
Research Triangle Park, NC 27709

In re Application of  
DUNKEL et al.  
Application No. 10/538,242  
PCT No.: PCT/EP03/13498  
Int. Filing Date: 01 December 2003  
Priority Date: 13 December 2002  
Attorney Docket No.: CS8535/LeA 36,334  
For: BIPHENYLCABOXAMIDES

DECISION ON PETITION  
UNDER 37 CFR 1.181

This decision is issued in response to applicant's "Second Petition under 37 CFR 1.181" filed in the United States Patent and Trademark Office (USPTO) on 10 October 2007. No petition fee is required.

**BACKGROUND**

On 01 December 2003, applicant filed international application no. PCT/EP03/13498 which claimed a priority date of 13 December 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 01 July 2004. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 13 June 2005.

On 07 June 2005, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the basic national fee; a copy of the international application; and a preliminary amendment.

On 30 December 2005, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 23 March 2007, applicant filed a Petition under 37 CFR 1.181. (The petition included a copy of the declaration purportedly filed on 15 December 2005.) In a decision dated 17 August 2007, applicant's petition under 37 CFR 1.181 was dismissed without prejudice.

On 10 October 2007, applicant filed a "Second Petition under 37 CFR 1.181." The petition requests withdrawal of the holding of abandonment stating that the declaration was previously filed via facsimile on 15 December 2005.

### DISCUSSION

The present petition is accompanied by a facsimile cover sheet entitled "Submission of Missing Parts of Application under 35 U.S.C. 371" that references an attached declaration, contains the authorization to charge Deposit Account No. 50-2510 dated 15 December 2005; and includes confirmation report from applicant's facsimile machine. The petition also includes a copy of an executed declaration.

The application file does not contain the materials purportedly filed by facsimile on 15 December 2005. In order to confirm the 15 December 2005 filing of the materials accompanying the present petition, applicants must satisfy the requirements set forth in 37 CFR 1.8(b), which states the following:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The evidence filed with the present petition is convincing that the 15 December 2005 response included a declaration with a certificate of facsimile transmission. Additionally, applicants have: (1) informed the Office of the previous mailing of the correspondence promptly after becoming aware that the Office did not receive the items

transmitted on 15 December 2005, (2) supplied copies of the previously mailed correspondence; and (3) included a statement by Richard E.L. Henderson which attests on a personal knowledge of the 15 December 2005 transmission. Additionally, petitioner has provided a copy of the sending unit's report confirming transmission on 15 December 2005.

The declaration submitted will be given a receipt date of 23 March 2007. (See 37 CFR 1.8(a)). Accordingly, it is considered appropriate to withdraw the holding of abandonment.

### CONCLUSION

As construed above, applicants' petition under 37 CFR 1.181 to withdraw the holding of abandonment is **GRANTED**. The Notification Of Missing Requirements mailed on 30 December 2005 is hereby **VACATED**.

The application has an international filing date of 01 December 2003 under 35 U.S.C. 363, and a 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) date of 23 March 2007.

This application is being forwarded to the National Stage Processing Branch of the International Division for further processing.



Anthony Smith  
Attorney-Advisor  
Office of PCT Legal Administration  
Telephone: (571) 272-3298  
Facsimile: (571) 273-0459